

DECLARATION OF RESTRICTIVE COVENANTS

THESE RESTRICTIVE COVENANTS are made this (*enter date*) day of (*enter month*), (*enter year*), by the (*enter full name of agency receiving HOME funds from the City*) ("*enter initials or abbreviated name of agency*"), the City of Roanoke, Virginia, ("the City") and (*enter full name of the initial homebuyer*) ("Initial Homebuyer").

WHEREAS, by the agreement dated (*enter original date of the contract between the agency and the City*) ("the Agreement") with the City, (*enter initials or abbreviated name of agency*) has accepted upon certain terms and conditions HOME Investment Partnership Program ("HOME") funds and has used such funds to make the property located at (*enter street address, city, state, zip code and tax number of property*) ("the Property") available for homeownership; and

WHEREAS, in connection with the acceptance and such use of the HOME funds, U.S. Department of Housing and Urban Development ("HUD") regulations mandate the enforcement of certain "affordability" requirements upon the Property for a specified period; and

WHEREAS, in order to comply with the HUD affordability requirements, the (*enter initials or abbreviated name of agency*) desires to subject the Property to certain Restrictive Covenants.

NOW, THEREFORE, WITNESSETH THAT the (*enter initials or abbreviated name of agency*) does hereby declare and covenant that the Property shall be held and conveyed subject to the following covenants, which shall be enforceable by the City in accordance with this Declaration:

1. The terms and conditions herein shall apply for a period of (*enter number of years*) years from the date this document is recorded ("the period of affordability"). This period is based upon a total of \$(*enter the total dollar amount of HOME funds provided directly to the Initial Homebuyer*) in HOME funds having been provided to the Initial Homebuyer that is subject to recapture. The amount subject to recapture is all **direct HOME assistance to the Initial Homebuyer** in the form of grants, loans, interest buy-downs, a reduction in the purchase price of the Property below fair market value or other direct assistance for the acquisition of the property, including any HOME rehabilitation assistance.

2. The Property is being sold by (*enter initials or abbreviated name of agency*) to the Initial Homebuyer, who shall use the Property as his or her principal residence and who is a member of family having a gross family income not exceeding 80% of the area median, as established by HUD and in effect at the time the Initial Homebuyer applies to (*enter initials or abbreviated name of agency*) to purchase the Property.

In the event that, within the period of affordability, the Initial Homebuyer ceases using the Property as his or her principal residence for reasons other than the resale of the Property, the Initial Homebuyer shall repay to the City the amount indicated in section 1 above minus any principal previously repaid on any HOME loans included in said amount.

In the event that, during the period of affordability, the Initial Homebuyer sells the Property, the City shall receive payment from Initial Homebuyer in accordance with the following:

(a) The "Net Proceeds" from the sale shall be determined by subtracting the amount of the seller's (i.e., the Initial Homebuyer) closing costs and repayments of outstanding loans on the Property, including the repayments of any loans of HOME or other funds provided by the City or other sources;

(b) The Initial Homebuyer may recover his or her "Initial Homebuyer Investment" from the Net Proceeds. The Initial Homebuyer Investment includes the amounts he or she contributed to the downpayment when the Property was originally purchased, to any permanent improvements to the Property and to payments of principal on the permanent financing.

(c) Any balance remaining from (b) above ("Balance") shall be divided proportionally between the Initial Homebuyer and the City according to their investments and the formulas below. The Initial Homebuyer Investment shall be as defined in (b) above. The "City Investment" shall include all grants and loans of HOME or other City funds provided to the Initial Homebuyer, minus any repayments previously made to the City.

City Investment X Balance = Amount to City
City Investment + Initial Homebuyer Investment

Initial Homebuyer Investment X Balance = Amount to Initial Homebuyer
City Investment + Initial Homebuyer Investment

In the event the proceeds from the sale of the Property are insufficient to permit the Initial Homebuyer to recover any of the amounts indicated in (a), (b) or (c) above, neither the City nor any previous owner shall be liable for such insufficiency.

3. Any sum payable under paragraph 2 shall be payable at the City's Office of Billings and Collections, 215 Church Avenue, Roanoke, Virginia 24011, or at such other place as the City may hereafter designate in writing, within ten (10) days of settlement of the sale or conveyance of the Property. Such payment shall be clearly identified as "Proceeds from Transfer of HOME-Assisted Property at (*enter property address*)."

4. These covenants shall remain in effect until any of the following "termination events" occur:

a. The Property remains in the possession of an eligible family for the period of affordability set forth in section 1; or

b. Any successor or assign of the (*enter initials or abbreviated name of agency*) pays the applicable sum set forth in section 2; or

c. Foreclosure, transfer in lieu of foreclosure or assignment of an FHA-insured loan to HUD.

The City shall be notified and have the right of first refusal to purchase the Property before foreclosure to preserve affordability. The affordability restrictions in sections 1 and 2 shall be revived according to the original terms if, during the original period of affordability, the owner of record before the termination event, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Property. Notification to the City shall be in writing to the Director, Department of Housing and Neighborhood Services, 215 Church Avenue, Roanoke, Virginia 24011.

5. Enforcement. Violation or breach of any restriction or covenant herein contained shall give to the City the right to institute any proceeding at law or in equity necessary to recover the applicable sum set forth in section 1. If action is instituted by the City to recover the sum, the (*enter initials or abbreviated name of agency*) or its successors in title agree to pay all costs of collection, including court costs and reasonable attorney's fees.

IN WITNESS WHEREOF, this Declaration of Restrictive Covenants has been executed by:

ATTEST:

(*enter full name of agency receiving HOME funds from the City*)

(*type name and title*)

(*type name and title*)

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by

Title

My Commission expires:_____.

Notary Public

Approved As To HOME Eligibility:

Approved As To Form:

Department of Neighborhood Services

City Attorney's Office

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by

_____, _____.

Title

My Commission expires:_____.

Notary Public

Homebuyer:

(type name)

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by

_____, _____.

Title

My Commission expires:_____.

Notary Public